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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 211

METROMEDIA, INC., PETITIONER

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS and UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 212

METROMEDIA, INC., APPELLANT

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS and UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES IN OPPOSITION IN NO. 211

MOTION OF THE UNITED STATES TO DISMISS OR AFFIRM IN NO. 212

OPINIONS BELOW

The oral opinion of the district court (Def. App. 13a-19a)[1] is unreported. The opinion of the court of appeals (Pet. A1-A10) is reported at 341 F. 2d 1003.

JURISDICTION

Uncertain as to the proper appellate procedure, Metromedia, Inc., has filed a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit (No. 211) and, in the alternative, has docketed a direct appeal from the judgment of the United States District Court for the Southern District of New York (No. 212). The judgment of the court of appeals was entered March 8, 1965. The petition for a writ of certiorari in No. 211 was filed June 4, 1965. The jurisdiction of this Court in No. 211 is invoked under 28 U.S.C. 1254(1). The district court order was entered on March 25, 1964. The notice of appeal to this Court in No. 212 was filed on May 19, 1964. The district court extended the time in which to docket the appeal until [redacted] and the jurisdictional statement was filed on June 4, 1965. The jurisdiction of this Court on direct appeal is invoked under Section 2 of the Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. We submit, *infra*, p. 9, that this provision is inapplicable and that the appeal in No. 212 should be dismissed.

June 28 1965

[1] "Def. App." refers to the "Brief and Appendix of Defendant-Appellee" in the court of appeals.

QUESTION PRESENTED

Whether a nonparty may initiate a proceeding in a government antitrust suit for contempt of a consent judgment, where the consent judgment explicitly establishes a different district court procedure through which such a nonparty may enforce the judgment against the defendant.

STATEMENT

ASCAP is an organization of composers, authors, and publishers organized for the purpose of licensing the performance of its members' copyrighted works and protecting them against infringements. In 1941, the United States filed a complaint charging ASCAP with having violated Section 1 of the Sherman Act. The suit was settled by a consent decree, subsequently amended in 1950 and in 1960 (Pet. A3). The decree regulates the relations of ASCAP to its members and sets the terms upon which ASCAP is to issue licenses for the public performance of copyrighted works in its repertory. As pertinent here, the decree requires ASCAP to "grant to any user making written application therefor a non-exclusive license to perform all of the compositions in the ASCAP repertory" (Decree, Section VI, Pet. App. 9a).[2] Upon receipt of an application for a license, ASCAP is required to "advise the applicant in writing of the fee which it [ASCAP] deems reasonable for the license requested" (Decree, Section IX(A), Pet. App. 11a). If the parties are

[2] "Pet. App." refers to the "Appendix of Petitioner-Appellant, Metromedia, Inc.," in the court of appeals.